701.

SUPREME COURT OF THE UNITED STATES.

No. 102.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

ONE CASE OF CLOCKS—LION, PINSARD & CO., CLAIMANTS.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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GIDEON, Print.

CIRCUIT COURT OF THE UNITED STATES,
Fifth circuit and eastern district, Louisiana.

A transcript of the record and proceedings in the case of the United States vs. *One case of clocks—Lion, Pinsard & Co., claimants—No.* 2238.

On the 18th day of March, 1853, the following entry was made in the minutes:

THE UNITED STATES
vs.
ONE CASE OF CLOCKS, Lion, Pinsard & Co., claimants. } No. 2238.

On motion of Logan Hunton, U. S. district attorney, and on suggesting that there has been judgment against the plaintiffs in this cause by the honorable the district court of the United States for the eastern district of Louisiana, by which they feel aggrieved, it is ordered that they be allowed a writ of error returnable to the next term of this court.

Writ of error, issued 18*th March,* 1853.

UNITED STATES OF AMERICA.

The President of the United States, to the honorable the judge of the district court of the United States for the eastern district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said district court, before you, between the United States and One case of clocks, Lion, Pinsard & Co., claimants, a manifest error hath happened, to the great damage of the said United States, as by their complaint appears: we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States, for the 5th circuit and eastern district of Louisiana, together with this writ, so that you have the same at New Orleans on the fourth Monday of April next, in the said circuit court, to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States, at New Orleans, this 18th March, 1853.

J. W. GURLEY,
Clerk of the U. S. circuit court, eastern district, La.

[REC. CII, D. T., 1853.]—1

Transcript of the record and proceedings in the United States district court, filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, on the 25th day of April, 1853.

UNITED STATES OF AMERICA,
Eastern district of Louisiana.

District court of the United States for the eastern district of Louisiana.

Information.—Dec. 10th, 1852.

THE UNITED STATES
vs.
ONE CASE OF CLOCKS, [L., P. & Co.]

To the honorable T. H. McCaleb, judge of the district court for the eastern district of Louisiana.

Be it remembered, that on this eighth day of December, in the year one thousand eight hundred and fifty-two, into the district court of the United States, in and for the eastern district of Louisiana, comes Logan Hunton, attorney of the United States for the district aforesaid, and in the name and behalf of the United States, as well as of George C. Lawrason, esq., collector of the port of New Orleans, and of all other persons concerned, propounds and gives the said judge to understand and be informed that the said collector hath seized and now has in his custody, as being forfeited to the United States, the following goods, wares and merchandise, to wit: one case of clocks marked [L., P. & Co.,] which case contains sixteen clocks, and which are forfeited for the causes hereinafter mentioned: 1st, that the said goods, wares, and merchandise, to wit, clocks, are of the manufacture of some foreign country to the said attorney unknown, and were heretofore, to wit, on the twenty-second day of November, in the year of our Lord one thousand eight hundred and fifty-two, brought or imported in a ship called the Corinthian from a foreign port or place, to wit, the port of Havre, in France, to the port of New Orleans, in the district aforesaid, which said goods, wares and merchandise are subject to the payment of duties to the United States on being brought and imported as aforesaid. That an entry of said goods, wares and merchandise, to wit, clocks, duly signed, was, at the time of said importation thereof, made at the office of the collector of the customs of the said port of New Orleans, and that on such entry being made as aforesaid, an invoice of the goods, wares and merchandise, to wit, clocks, included in said entry, was produced and left with said collector; and the said attorney avers that the said goods, wares and merchandise, to wit, clocks, which were so entered as aforesaid, and of which an invoice was so produced and left as aforesaid, were not invoiced according to the actual cost or market value thereof at the place of exportation, but on the contrary were in fact invoiced at less sums than the actual cost thereof at the place of exportation,

with design to evade the duties thereon, or some part thereof, against the form of the statute in such cases made and provided.

2nd. That the said goods, wares and merchandise being subject to the payment of ad valorem duties to the United States, an entry thereof duly signed was, at the time of the importation thereof, made at the office of the collector of the customs of said port of New Orleans, and that on such entry being made as aforesaid, an invoice of the goods, wares and merchandise included in such entry was produced and left with the said collector of the customs of the said port of New Orleans, and district aforesaid. And the said attorney further avers that the said invoice so produced and left as aforesaid was made up with intent, by a false valuation, to evade and defraud the revenue of the United States, contrary to the form of the act of Congress in such case made and provided; whereby and by reason of the premises and the acts of Congress in that behalf made and provided, the said goods, wares and merchandise, to wit, clocks, have been and are forfeited to the United States.

Wherefore, the said attorney prays the advisement of this honorable court in the premises, and for monition and other proper process, to the end that the said case of clocks may, by the definitive sentence and decree of this court, be and remain forfeited to the United States.

(Signed) L. HUNTON,
U. S. Attorney.

Nota.—Judge absent: process ordered out by
(Signed) ROB'T M. LUSHER,
Deputy clerk.

Filed Dec. 10, 1852.

THE UNITED STATES
vs.
ONE CASE OF CLOCKS, L., P. & Co. } No. 6830.

Warrant of attachment and monition.—Dec. 10th, 1852.

The President of the United States of America, to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize and into your possession take the one case of clocks, (16) marked L. and P. & Co., seized by Geo. C. Lawrason, esquire, collector of the customs, and in his custody as being forfeited to the United States, and now libeled by the United States under the 66th section of the act of March 2, 1799, and the 4th section of the act of 1830, (providing penalties in case of false valuation) to the end aforesaid, in the district court of the United States, for the eastern district of Louisiana: that you do cite and admonish the owner or owners, and all and every other person or persons having, or pretending to have any right, title or interest in or to the same, to be and appear before a district court of the United States, for the district aforesaid, to be holden at the city of New Orleans, on or before the third

Monday from the service hereof, to show cause, if any they have or can, why the said one case of clocks, marked L., P. & Co., should not be condemned as forfeited to the United States, and be sold agreeably to the prayer of the libellants; and how you have executed this warrant that you make return according to law. Witness the honorable Theo. H. McCaleb, judge of the said court, this tenth day of December, 1852, and seventy-seventh year of the independence of the United States.

(Signed) ROB'T M. LUSHER, *Deputy clerk.*

Marshal's return.

Received 10th Dec. 1852, and on the same day seized in the hands of Geo. C. Lawrason, esq., collector of the customs, the within described case of clocks, marked L., P. & Co.; gave notice, published monition and in all respects complied with the law and the commands of this warrant; and on the 24th Dec. 1852, after appraisement of said case of clocks, the same were delivered to claimants, Lion, Pinsard & Co., upon bond being given according to law. Returned into court.

(Signed) CHAS. A. LABUGAN, *Deputy marshal.*

Nota.—The said one case of clocks, on value bond for $310 00, was delivered to the claimants pendent lite, by rule of court of Dec. 24th, 1852, pursuant to the 68th section of the act of March 2d, 1799, and said bond and preliminary proceedings are now of record in said district court.

Claim and answer, Lion, Pinsard & Co., filed 22d Dec. 1852.

THE UNITED STATES
vs.
ONE CASE OF CLOCKS, L., P. & Co.

Personally appeared Achille Lion, a member of the firm of Lion, Pinsard & Co., who being duly sworn deposes, that the merchandise seized in the said suit belongs entirely to said firm of Lion, Pinsard & Co.

(Signed) A. LION.

Sworn to and subscribed at New Orleans, this 22d Dec. 1852, before

(Signed) ROB'T M. LUSHER,
Deputy clerk.

The claim and answer of Lion, Pinsard & Co., a firm composed of Achille Lion, Isidore Pinsard and Victor Hebert, respectfully shows that said firm is the true and only owner of the merchandise seized in this suit. That said respondents deny all and singular the charges and allegations in said information contained, and especially deny that said merchandise is liable to seizure as alleged. Wherefore they pray that said information be dismissed.

BENJAMIN & MICOU,

(Signed) By CHAS. A. TAYLOR,
Att'ys for resp'ts.

Filed Dec. 22d, 1852.

Proceedings.—February term, A. D. 1853.

Trial of issue, verdict, &c.

THURSDAY, *March* 3, 1853.

Present, honorable Theo. H. McCaleb.

THE UNITED STATES
vs.
ONE CASE OF CLOCKS, Lion, Pinsard & Co., claimants. } No. 6830.

This case came regularly up for hearing; the U. S. Attorney, L. Hunton, esq., for libellants; C. A. Taylor, esq., representing Messrs. Benjamin & Micou, for claimants, present. The following jurors were sworn and empanneled to try the issue, viz:

Jury.—1, M. A. Vanhook; 2, Alex. Ward; 3, C. R. Harrison; 4, Wm. Cooper; 5, R. C. Cummings; 6, J. P. Coulon; 7, Wm. Colby; 8, C. G. Watrous; 9, J. B. Wright; 10, H. E. Metcalf; 11, A. L. Stewart; 12, Charles Mel.

The pleadings and statutes (66th section of the act of March 2, 1799, and 4th section of act of May 28th, 1830,) having been read and the cause explained by the United States Attorney, there were offered in evidence for the United States, 1st, impost entry per ship "Corinthian," Nov. 17, 1852, of one case of clocks, &c.; and 2d, appraisement of same at C. H., Dec. 7, '52 (showing undervaluation on invoice of 25 per centum,) together with the oral testimony of W. V. Crouch and Louis Müh, sworn and examined in relation to the value of the clocks. No other witnesses being present, the case was by consent submitted, the court instructing the jury that the market value of the clocks at the place and time of exportation is the proper basis of duties, and appointing Carter R. Harrison, foreman. And thereupon the jury forthwith rendered their verdict in the words and figures following: "We the jury find for the United States. New Orleans, March 3d, 1853. C. R. Harrison, foreman." And said verdict having been ordered to be as it is recorded, judgment was thereupon rendered in the words following:

The court considering the law and the verdict of the jury, doth order, adjudge and decree, and it is hereby ordered, adjudged and decreed, that the said one case of clocks, marked L., P. & Co., as described in the information, be condemned as forfeited to the United States for the causes alleged in said information; and further, that there be judgment against Lion, Pinsard & Co., the claimants of the same, for the full sum of three hundred and ten dollars, the appraised value of said clocks, and costs pursuant to the tenor of the value bond executed by said claimants on the 24th day of December, A. D. 1852, and now remaining of record in this court. (On minutes of May 3, 1853.)

TUESDAY, *March 8th*, 1853.

THE UNITED STATES
vs.
ONE CASE OF CLOCKS.

Chas. A. Taylor, esq., on behalf of the claimants, Lion, Pinsard & Co., this day moved an arrest of judgment in this case, on grounds to be filed.

Final judgment.

February term.—Thursday, March 10th, 1853.

THE UNITED STATES
vs.
ONE CASE OF CLOCKS, Lion, Pinsard & Co., claimants.

The proctor for the claimants herein having filed the grounds on which they base their motion for an arrest of judgment, and the court being satisfied that there is no existing law authorizing the forfeiture of goods for the causes stated in the information in this case; it is now ordered that judgment be arrested and the information of the United States dismissed. And being further satisfied that there was reasonable cause of seizure in this case, it is also ordered that such fact be and it is hereby certified of record.

Judgment signed, March 18th, 1853.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

UNITED STATES DISTRICT COURT,
Eastern district of La.

I, N. R. Jennings, clerk of the district court of the United States, for the said eastern district of Louisiana, do certify that the foregoing (9 folios) is a true and correct transcript of the original record and proceedings in the case of the United States versus One case of clocks, Lion, Pinsard & Co., claimants, No. 6830 of the docket of said district court.

In testimony whereof, I hereto set my hand and the seal of said court, at New Orleans, this twenty-second day of April, A. D. 1853. [SEAL.]

N. R. JENNINGS, *Clerk*,
By ROB'T M. LUSHER, *Deputy Clerk.*

Endorsed on the foregoing transcript as follows:

And now comes the said United States by its attorney, and says that there is error in *in* the foregoing record and proceedings, in this, that the court erred:

1. In arresting the judgment.
2. The court erred in dismissing the information, wherefore, &c.

Filed 25th April, 1853.

J. W. GURLEY, *Clerk.*

And on the 5th day of May, A. D. 1853, this case was taken up for trial in the circuit court of the U. S. before the Hon. J. A. Campbell, presiding judge, and the following entry of proceedings then had was made on the minutes:

On writ of error.

UNITED STATES, plaintiffs in error,
vs.
ONE CASE OF CLOCKS, Lion, Pinsard & Co., claimants. } No. 2238.

This cause was submitted by consent, without argument, and taken under advisement.

And afterwards, to wit, on the 10th day of May, 1853, the court rendered a final judgment in this case, which was duly entered of record in the minutes, and on the 18th day of May, A. D. 1853, the said final judgment was record in the judgment docket, and signed, in the words and figures following, to wit:

CIRCUIT COURT OF THE UNITED STATES,
Fifth circuit and eastern district of Louisiana.

April term, A. D. 1853.

NEW ORLEANS, *Tuesday, 10th May,* 1853.

Court met pursuant to adjournment.

Present, honorable J. A. Campbell, presiding judge; absent, honorable Theo. H. McCaleb, district judge.

THE UNITED STATES, plaintiffs in error,
vs.
ONE CASE OF CLOCKS, Lion, Pinsard & Co., claimants. } No. 2238.

This cause came on to be heard at this term on the transcript of the record from the district court, and was argued by counsel. On consideration whereof it is ordered, adjudged and decreed that the judgment of the district court be affirmed.

Judgment rendered, 10th May, 1853.
Signed 18th May, 1853.
J. A. CAMPBELL, *Judge, &c.*

Petition for writ of error.

Filed in open court, 20th May, A. D. 1853.

UNITED STATES, plaintiffs in error,
vs.
ONE CASE OF CLOCKS, Lion, Pinsard & Co., claimants.

To the honorable the circuit court of the United States for the fifth circuit and eastern district of Louisiana.

The plaintiffs herein, by their attorney, E. Warren Moise, respectfully represent, that they are informed and believe that there is error

to their injury in the judgment rendered in the above entitled cause. Wherefore, said plaintiffs pray that a writ of error be allowed them, returnable to the next term of the Supreme Court of the United States.

E. WARREN MOISE, *U. S. Attorney.*

Order allowing writ of error, recorded in the minutes, May 20th, 1853.

THE UNITED STATES, plaintiffs in error,
vs.
ONE CASE OF CLOCKS, Lion, Pinsard & Co., claimants. } No. 2238.

On motion of E. W. Moise, U. S. district attorney, and on presenting and filing petition on behalf of plaintiffs praying a writ of error from the judgment herein rendered against them, on the 18th instant, it is ordered that the same be allowed, returnable to the next term of the Supreme Court of the United States.

UNITED STATES OF AMERICA:

Circuit court of the U. S., fifth circuit, and eastern district of Louisiana.

CLERK'S OFFICE.

I, John W. Gurley, clerk of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, do hereby certify, that the foregoing 10 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had in the case of the United States, plaintiffs in error, vs. One Case of Clocks, Lion, Pinsard & Co., claimants, No. 2238 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 10th day of June, A. D. 1853.

[SEAL.]

J. W. GURLEY, *Clerk.*

I, Theodore H. McCaleb, United States judge for the eastern district of Louisiana, do hereby certify, that John W. Gurley, whose name is signed to the above certificate as clerk of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 10th day of June, A. D. 1853.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the judges of the circuit court of the United States, in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you,

or one of you, between the United States of America and One Case of Clocks, Lion, Pinsard & Co., claimants, a manifest error hath happened, to the great damage of the said United States of America, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 28th of May, in the year of our Lord one thousand eight hundred and fifty-three.

J. W. GURLEY,
Clerk of the United States circuit court for eastern district of Louisiana.

THE UNITED STATES OF AMERICA.

The President of the United States, to Lion, Pinsard & Co., claimants of one case of clocks, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, wherein the United States of America are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this thirtieth day of May, in the year of our Lord one thousand eight hundred and fifty-three.

J. A. CAMPBELL, *Associate Justice, &c.*

Marshal's return.

Received May 31st, 1853, and on the 31st day of May, 1853, I served a copy of the within citation in error on Benjamin & Micou, by handing the same to J. P. Benjamin, of said firm, in person, in the city of New Orleans, May 31st, 1853, and returned same day.

M. MARIGNY, *U. S. M.*
By EMILE MARY, *Deputy marshal.*